

DECENTERING THE PROSECUTION-ORIENTED APPROACH: TACKLING BOTH SUPPLY AND DEMAND IN THE STRUGGLE AGAINST HUMAN TRAFFICKING

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1. INTRODUCTION

Fourteen years after the UN Human Trafficking Protocol - hailed as “the single most important development in the fight against human trafficking”¹ - was adopted by the United Nations, a more modest document was opened for signature by the International Labour Organisation (ILO). This is the 2014 Protocol to the Forced Labour Convention, 1930 (No. 29) which entered into force on 9th November 2016² and which, like its better-known sister Protocol, is aimed at the “effective elimination” of trafficking in persons.³ Here, the similarities stop. The UN Human Trafficking Protocol is a penalising document, requiring the vigorous prosecution of organised criminals, which has been ratified by 169 states parties and enthusiastically championed by the United States. The ILO Protocol, by contrast aims at systematic preventive and regulatory action by “the competent authorities ... in coordination with employers’ and workers’ organizations” and has been ratified by eighteen countries⁴. The purpose of this article is to determine whether the advent of the 2014 ILO Protocol is evidence of the beginning of a fundamental shift in approach by the international community, or just another false dawn.

A comparison of the text of the two Protocols reveals further profound differences of approach. The UN Human Trafficking Protocol emphasises that the criminality which it seeks to suppress relates exclusively to the forcible recruitment, transportation, transfer, harbouring or receipt of victims, particularly women and girls, by organised criminals. There is no substantive reference to forced labour or slavery or the more general context of such activities. By contrast the ILO Protocol, with much greater ambition, maintains that protection should be extended to all “women and men, girls and boys” and not just those trafficked. Trafficking itself must be addressed in the context of forced or compulsory labour which ‘violates the human rights and dignity of millions contributes to the perpetuation of poverty and stands in the way of the achievement of decent work for all’.⁵ Tellingly, the only reference to prosecution is in relation to the protection of victims from criminal proceedings.⁶

The 2000 UN Human Trafficking Protocol has been the subject of sustained and vocal criticism since its inception.⁷ The main concerns relate to the absence of any adequate provisions safeguarding the human rights of victims⁸, the potential exemption for victims of

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¹ A Gallagher, ‘Two Cheers for the Trafficking Protocol’ (2015) 4 Anti-Trafficking Review.

² www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:3174672

³ Preamble. PO29 - Protocol of 2014 to the Forced Labour Convention, 1930.

⁴ As of August 2017, eighteen countries ratified the ILO 2014 Protocol.

www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:3174672

⁵ *ibid.*

⁶ Art 4(2). PO29 Protocol.

⁷ J Doezenia, ‘Who Gets to Choose? Coercion, Consent, and the UN Trafficking Protocol’ (2002) 10 Gender & Development 1, 20-27.

⁸ J Chuang, ‘Exploitation Creep and the Unmaking of Human Trafficking Law’ (2014) 108 American Journal of International Law 4, 609-649 and 615.

trafficking wholly within the boundaries of a single State⁹ and the failure to provide any effective enforcement or monitoring mechanism.¹⁰ Worse still it has been argued that the focus on “trafficking” and specifically on the position of women and girls, is “lopsided”¹¹ and has directed attention and resources away from the more general, dangerous and extensive problems of forced labour and slavery¹², with the international Labour Organization playing almost no role in the drafting process.¹³ Moreover, it has encouraged states to adopt draconian measures to prevent unauthorised border crossing¹⁴ and provided justification for the targeting of migrants with penal sanctions.¹⁵ Under this aggressively punitive approach, irregular workers are more likely to be seen as potential perpetrators rather than as victims of labour exploitation.¹⁶

Part of the problem has been the unfortunate conflation of objectives in the UN Human Trafficking Protocol. Hathaway has identified at least six divergent aims, including attempts by an extraordinary alliance of the American religious right and international feminism, to combat prostitution¹⁷ combined with states’ efforts against organized crime and disorderly migration.¹⁸ It is not surprising, given this diversity of objectives and the profound disagreements amongst the lobbying NGO community at Palermo about the importance of consent¹⁹, that domestic legislative responses to the Protocol should have been so inconsistent.²⁰ But perhaps the most telling failure of the Protocol is the evidence that its impact on trafficking after more than a decade has been barely perceptible. As Chuang puts it:

...crime control–focused interventions have produced disappointing results even by the United States’ own (flawed) metrics—with a reported 44,000 survivors found worldwide last year, and over 20 million victims yet to be identified.²¹

Nevertheless, recent years have seen an extraordinary renaissance of public and academic interest in trafficking, slavery and forced labour. With its origins in Bale’s seminal 1998 intervention²² the research output has been relentless and has begun to change the whole international approach. One of the most noticeable characteristics of much of this work has been the shift in focus from trafficking to “modern day slavery”, a new conceptionalisation

⁹ J C Hathaway, ‘The Human Rights Quagmire of Human Trafficking’ (2008) *Virginia Journal of International Law* 49, 52-53.

¹⁰ *ibid.* 18.

¹¹ *ibid.* 42.

¹² M Wijers, ‘Purity, Victimhood and Agency: Fifteen Years of the UN Trafficking Protocol’ (2015) *Anti-Trafficking Review* 4, 70; Hathaway (n 8) 9.13.

¹³ Chuang (n8) 616.

¹⁴ C Thomas, ‘Immigration Controls and Modern-Day Slavery’ (2013) *Cornell Legal Studies Research Paper* 13-86.

¹⁵ *ibid.* 57-8.

¹⁶ J van der Leun and A van Schijndel ‘Emerging from the shadows or pushed into the dark?’

The relation between the combat against trafficking in human beings and migration control’ (2016) 44 *International Journal of Law, Crime and Justice*, 27.

¹⁷ Hathaway (n9) 43.

¹⁸ Wijers (n12) 58.

¹⁹ V.E. Munro, ‘Stopping Traffic? A Comparative Study of Responses to the Trafficking in Women for Prostitution’ (2006) 46 *British Journal of Criminology* 2, 318-33.

²⁰ C A Seideman, ‘The Palermo Protocol: Why it has been ineffective in reducing human sex trafficking’ 2015 9 *Global Tides* 1, 1-14.

²¹ Chuang (n8) 611-12.

²² K Bales, *Disposable People: New Slavery in the Global Economy* (Oakland, University of California Press, 2012).

coined by Bales, albeit in the face of critics who have expressed concerns about a dangerous amalgamation of well-established legal categories.²³ This has not only been reflected in the research literature but also in the policy of states such as the US²⁴ and the UK²⁵, which have been at the forefront of the campaign against trafficking. According to the UN Office of Drugs and Crime (UNODC) in 2009:

The term trafficking in persons can be misleading: it places emphasis on the transaction aspects of a crime that is more accurately described as enslavement.... After much neglect and indifference, the world is waking up to the reality of a modern form of slavery.²⁶

Whilst this represents a welcome realisation that trafficking represents only one aspect of a much wider problem, two obvious problems arise from the association of slavery, or some modified, contemporary form of slavery, with modernity. First, it implies a decisive break with earlier forms of slavery. In this narrative, which has been something of an orthodoxy until recent years, classical slavery (largely but not exclusively represented by the north Atlantic slave trade and plantation economies) was successfully eliminated in the emancipation campaigns of the nineteenth century. Such comfortable assumptions allowed the international community to focus its attention on residual, successor forms of slavery such as “white slavery” which engrossed the attention of the League of Nations²⁷, or the trafficking of women and girls for sexual purposes, which became the focus of the UN Human Trafficking Protocol.

Second, it suggests a model of successful emancipation in which penal legislation aimed specifically at trafficking, such as the British 1807 Act for the Abolition of the Slave Trade, was the necessary first step, which would so weaken the slave economy that the formal Act of abolition and manumission, a few decades later²⁸ could be easily achieved. Unfortunately, the lessons of history are rarely so clear cut. Slavery is an ancient and highly tenacious form of the abuse of human beings, rooted in bullying and exploitation, which has never been eliminated, which fuelled the economies of the modern period and which has grown exponentially in our contemporary, globalised world. The campaign to eradicate it stands, as a number of scholars have argued²⁹ at a critical crossroads. The choice faced by the international community is one represented starkly by the two protocols referred to above and is informed by a deep scholarly division between the advocates of aggressive criminalisation of traffickers, gangmasters and slave owners and those who consider that collective regulation and “responsibilization” are the keys to successful eradication.

The conflict between these two approaches has been sharpened in recent years in a number of disciplines but none more so than Criminology. The creation of the UN Human Trafficking Protocol represented the high water mark of an international campaign of aggressive criminalization of transnational and international crime which was evident in the spate of legislation between 1988 and 2004. This included the 1988 Convention Against Illicit Traffic

23 J Chuang, ‘The Challenges and Perils of Reframing Trafficking as ‘Modern-Day Slavery’ (2015a) 5 Anti-Trafficking Review 146-49.

24 Chuang (n8) 623.

25 G Craig, ‘Human Trafficking and the UK Modern Slavery Bill’ (2015) 3 Social Inclusion 1, 136-39.

26 UNODC Global Report on Trafficking in Persons (2009), 6.

27 J Doezeema, ‘Loose Women or Lost Women? The Re-emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking in Women’ (1999) 18 Gender Issues 1, 23-50.

28 1834 Act for the Abolition of Slavery throughout the British Colonies.

29 Chuang (n8) p.611.

in Narcotic Drugs and Psychotropic Substances,³⁰ the signature of the Rome Statute in 1998 for the creation of an International Criminal Court to prosecute war crimes, the spate of international legislation against terrorism which followed the New York attacks on September 11th 2000 and the United Nations Convention Against Corruption in 2004.

This unprecedented global legislative campaign against transnational and international crime was underpinned by a belief in the efficacy of prosecution and penalisation as an effective response to offending, whether domestic, transnational or international. It reflected the dominance at that period of neo-conservative criminological thinking which, having effectively discredited left idealist and other humanitarian approaches in the 1980s, insisted on the importance of a predominately punitive approach to offending of all kinds. In 1995 Sir Anthony Bottoms coined the expression “populist punitiveness” to describe the dominant ethos ‘of politicians tapping into and using for their own purposes, what they believe to be the public’s generally punitive stance’.³¹ In short, popular support for a particular penal strategy (usually involving rigorous persecution and harsh penalties) was viewed as taking precedence over its effectiveness or reasonableness. This approach was reflective of a pervading cynicism, “nothing works” attitude towards the activities of the liberal elites or “Platonic Guardians” who had dominated criminology since the second world war but who had failed to demonstrate any palpable success for rehabilitative or therapeutic approaches to crime.³² By contrast, neo-conservative criminologists, such as so-called Right Realists or Rational Choice theorists, could point to the “New York Miracle” achieved by the zero tolerance policies of Mayor Giuliani and Police Chief Bratton.³³ Proponents of radical policies associated with this perspective argued convincingly that aggressive prosecution along the lines of “three strikes” and mass incarceration could drive organised crime out of business and had actually created the longest recorded decline in crime in the US from 1991 -2000. These policies began to be reproduced across the world and it was this dominant criminological orthodoxy³⁴ which justified the prosecutorial approach taken by the UN Human Trafficking Protocol.

Increasingly, however, doubts began to emerge about the credibility of the crime reduction data upon which these policies had been based. At the same time, resurgent Left Realist ideologies were actively promoting a more holistic response to offending. Young’s “Square of Crime” for example, sought to integrate civil society as a crucial element in the structural analysis of crime, alongside the offender, the victim and the control agencies.³⁵ These innovations opened the way for a broader “responsibilization”³⁶ approach, where the response to crime is not merely sought from the traditional control agencies, such as the police or

³⁰ R K Vogler and S Fouladvand, ‘The Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) and the Global War on Drugs’, in P P Hauck (ed), *International Law and Transnational Organised Crime* (Oxford, Oxford University Press, 2016).

³¹ A Bottoms, ‘The Philosophy and Politics of Punishment and Sentencing’, in C M Clarkson and R Morgan (eds), *The Politics of Sentencing Reform*, (Oxford, Clarendon, 1995) 40.

³² I Loader, ‘Fall of the ‘Platonic Guardians’. Liberalism, Criminology and Political Responses to Crime in England and Wales’ (2006) 46 *British Journal of Criminology* 561-86.

³³ D Dixon, ‘Broken Windows, Zero Tolerance, and the New York Miracle’ (1998) 10 *Current Issues in Criminal Justice* 1, 96-106.

³⁴ See generally eg J Pratt, D Brown, M Brown, S Hallsworth and W Morrison, eds., *The New Punitiveness: Trends, Theories, Perspectives* (Abingdon, Routledge 2013).

³⁵ J Lea, ‘Jock Young and the Development of Left Realist Criminology’ (2015) 23 *Critical Criminology* 2, 165-77.

³⁶ D Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Oxford, Oxford University Press 2001).

prosecution authorities but extends to a wide range of institutions in civil society, including in the private sector.

In this analysis, crime is seen as an inherent social problem which is addressed not by a narrow prosecutorial strategy aimed at the incapacitation of a distinct cadre of offenders but by eradicating the conditions which give rise to the push and pull factors which underlie most offending. It is these two, diametrically opposed theoretical positions upon which the policy choices proposed by the two international Protocols are based. Instead of applying the dominant punitive approach recommended by the UN Human Trafficking Protocol towards the suppliers of trafficked persons, there is an urgent need to focus on the demand for trafficked persons and fraudulent and exploitative labour practices. This article argues that the 2014 ILO Protocol offers a much better context within which a complementary and a more harmonised strategy can be adopted. Trafficking in persons has global reach and it flows from Sub-Saharan Africa, Western and Southern Europe, Central and South-Eastern Europe, North and Central America and the Caribbean, East Asia and the Middle East.³⁷ Although regional initiatives to tackle trafficking crime are not the focus of this article, European instruments will be addressed in Part II, section C and it is worth noting that the Association of Southeast Asian Nations (ASEAN) has also adopted its own regional legal instrument which will come into force when the sixth ASEAN member state ratifies it. To date, only Thailand, Singapore, and Cambodia have ratified. This article argues that a shift towards the regulatory approach which emphasises social responsibility can target and eliminate the conditions, including the illicit demand for exploitative labour, under which trafficking can flourish. It further claims that a radical decentering of the prosecution-oriented approach is needed to open up the possibility of regulatory innovation that could inform an effective global anti-trafficking regime.

2. THE PUNITIVE APPROACH TO HUMAN TRAFFICKING

The historic antecedents for the UN Human Trafficking Protocol can be found in three significant international instruments which were created by the League of Nations and subsequently the United Nations in the first sixty years of the twentieth century. Early moral campaigns against the ‘evil nature of slavery’³⁸ evolved and were assimilated into prosecutorial strategies directed against international crimes³⁹ during this period. In 1926, the League of Nations Slavery Convention⁴⁰ provided the first definition of slavery in all its forms⁴¹ and established a duty to prosecute violations of the act in its Articles 2 and 3.⁴² Criminalization of such conduct is contained in Article 6 and the main concern of this Convention was to monitor efforts towards the prohibition of slavery⁴³ and to impose severe penalties.⁴⁴

The second intervention, shortly after the end of the Second World War and anticipating the approach later adopted by the UN Human Trafficking Protocol, was the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others⁴⁵

³⁷ UNODC Global Report on Trafficking Persons (2016), 45.

³⁸ M C Bassiouni, ‘Enslavement as an International Crime’ (1991) 23 N.Y.U.J. Int’l. L. & Pol, 445-517.

³⁹ *ibid.* 450.

⁴⁰ The 1926 Convention to Suppress the Slave Trade and Slavery known as the Slavery Convention, signed on September 25, 1926 and entered in to force on 7 March 1927.

⁴¹ *ibid.* Art 1.

⁴² Bassiouni (n38) 467.

⁴³ The 1926 Slavery Convention, Arts 2 and 5.

⁴⁴ The 1926 Slavery Convention, Art 6.

⁴⁵ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Dec. 2, 1949, 96 U.N.T.S. 271

which similarly focused on criminalizing procurement for the purpose of prostitution.⁴⁶ Whilst some attention was given to preventing trafficking and the repatriation of victims,⁴⁷ the emphasis was on the anti-prostitution and law enforcement approach.⁴⁸ As with the 1926 Convention, the enforcement and implementation measures provided by the 1949 Convention were weak and largely ineffective.⁴⁹

There was no doubt that the experience of mass enslavement of subject peoples by the Nazis returned the issue to public attention and the International Military Tribunal (IMT) in Nuremberg considered forced labour exploitation and Article 6 (c) of its Statute addressed the crimes against humanity of enslavement.⁵⁰ In 1956 the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery expanded the definition of slave-related practices and its Articles 2 and 5 explicitly recognised such conducts as criminal offence. It included a number of practices and institutions that were considered similar to slavery, most notably bonded labour, serfdom, the selling of women by their families for marriage, certain forms of abuse of women, and the buying and selling of children for exploitation.⁵¹ The duty or right to cooperate in prosecution and punishment (including judicial assistance) is found in Article 8.⁵² Nevertheless, it was fair to say that the approach to slavery at this period was as a residual problem which flourished only in local pockets of pre-modernity, in the sex trade or under totalitarian rule.

2.1. Modern Slavery in the Context of Organized Crime

Such attitudes were to change dramatically in the late 1980s and early 1990s with the growth of globalization and the collapse of the Soviet Union. These events coincided with the ascendancy of a powerful neo-conservative lobby in Washington which viewed slavery, not as a factor in the corporate supply chain but as exclusively an attribute of organized crime. During this time, the renewed interest in modern slavery shown by Western governments, Inter-Governmental Organization (IGOs) and Non-Governmental Organization (NGOs) was an extension of growing concern with transnational crime. Slavery-related practices including enslavement, slave trading, forced labour and human trafficking are transnational crimes⁵³ and transnational criminal law provides crime control treaties which require states to criminalise

⁴⁶ The UN 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Article 2. www2.ohchr.org/english/law/pdf/trafficpersons.pdf

⁴⁷ The 1949 Convention, Arts 18 and 19.

⁴⁸ The 1949 Convention. See further eg N V Demleitner, 'The law at a crossroads: The construction of migrant women trafficked into prostitution', in D Kyle and R Koslowski (eds), *Global human smuggling: Comparative perspectives* (Baltimore: Johns Hopkins University Press, 2001), 257-93. (Explaining that the 1904 Agreement was considered ineffective and that there was need for an additional agreement in 1910); S Farrior, 'The International Law on Trafficking in Women and Children for Prostitution: Making It Live Up to Its Potential' (1997) 10 *Harvard Human Rights Journal* 213 (providing a background on the development of treaties addressing trafficking).

⁴⁹ T Jonathan, 'Law, otherness, and Human Trafficking' (2009) 49 *Santa Clara Law Review* 3, 637. See also S Scarpa, *Trafficking in Human Beings: Modern Slavery* (Oxford, Oxford University Press, 2008), 47.

⁵⁰ F Jeberger, 'Corporate Involvement in Slavery and Criminal Responsibility under International Law' (2016) 14 *Journal of International Criminal Justice* 2, 328.

⁵¹ The UN 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Art 1.

www.ohchr.org/EN/ProfessionalInterest/Pages/SupplementaryConventionAbolitionOfSlavery.aspx

⁵² Bassouni (n38) 717-721.

⁵³ Jeberger (n 50) 331.

those activities in domestic law.⁵⁴ In the context of international criminal law the ICC Statute under its Article 7 recognises enslavement as a crime against humanity⁵⁵, however, transnational criminal law provides indirect criminal responsibility for transnational crime through domestic penal codes which can have trans-border effects.⁵⁶ Slavery as such, in an increasing globalized world was viewed as just another criminal activity to be exploited by organized criminal gangs in a list which included money laundering, drug trafficking and the trade of weapons, human organs and people.⁵⁷ It was not surprising, therefore, that the United Nations 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, should have been enacted within the context of the United Nations Convention Against Transnational Organized Crime (UNCTOC).⁵⁸ In terms of the distinction between tackling organized crime and regulation of corporate organizations, it is worth mentioning that, a corporate operation which negligently engaged with organised crime for the provision of trafficked labour could not be considered as a willing participant in an organised crime network, notwithstanding that it performed a crucial function in legitimating, disguising and monetising criminal activity. Clearly a very different approach is required in dealing with the two sectors. Nevertheless, the corporate and business worlds should accept some degree of culpability for any failure to exercise due diligence in this respect.

The Trafficking Protocol, according to its *travaux préparatoires*, considered the views of every participating country to address all persons engaged in human trafficking⁵⁹ as a form of modern day slavery and it provided a wider definition of human trafficking that comprehended various forms of exploitation. However, it ignored the activities and involvement of human rights and labour rights bodies in the international response to trafficking and instead it centred the response in the law enforcement framework. This international framework was intended to deal with the contemporary incidence of people trafficking by identifying its characteristics and to facilitate effective international cooperation over prosecutions.⁶⁰

2.2. The UN Human Trafficking Protocol in Practice

The domination of neo-conservative law enforcement ideologies is embedded in the language of the Protocol which largely side-lined human rights and labour concerns.⁶¹ Whereas mandatory language was employed for the criminal law provisions, discretionary language was used with respect to victim assistance.⁶² The protection aspects of the UN Human Trafficking Protocol were in any event deeply contested and added very much an afterthought. Scarpa, for

⁵⁴ N. Boister, 'Transnational Criminal Law' (2003) 14 European Journal of International Law, 955.

⁵⁵ G. Werle and F. Jeberger, *Principles of International Criminal Law* (Oxford University Press, 2014).

⁵⁶ N. Boister, *An Introduction to Transnational Criminal Law* (Oxford University Press, 2012)

⁵⁷ D Nelken, 'Human Trafficking and Legal Culture' (2010) 43 Israel Law Review, 470-513.

⁵⁸ The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, was adopted by General Assembly Resolution 55/25 in 2000 and supplemented by the United Nations Convention Against Transnational Organized Crime. It entered into force on December 25, 2003.

⁵⁹ treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtidsg_no=XVIII-12-a&chapter=18&lang=en

⁶⁰ *travaux préparatoires* for the Organized Crime Convention and Protocol, at 322. Cited in A T Gallagher, *The International Law of Human Trafficking*, (Cambridge University Press, 2010), 26.

⁶¹ Munro (n 19), 325.

⁶² E M Bruch, 'Models Wanted: The Search for an Effective Response to Human Trafficking' (2004) 1 Stanford Journal of International Law, 22.

⁶³ J Todres, 'Human Rights, Labour, and the Prevention of Human Trafficking: A Response to A Labour Paradigm for Human Trafficking' (2013) 60 UCLA Law Review, 151.

example, has claimed that the main reason behind the discretionary language used in many protection measures is the lack of interest by government delegates in enhancing the protection of trafficked victims, who were mainly considered as a financial burden or as witnesses deserving only minimum rights, during the negotiation of the UN Human Trafficking Protocol.⁶³

The greatest advantage of a criminal justice response is that it offers the potential for prosecuting traffickers directly⁶⁴ and is intended to curb the current high levels of impunity that perpetuate the crime of trafficking in persons.⁶⁵ In terms of domestic legislation, the UN Human Trafficking Protocol has been extremely successful. According to the 2014 Global Report on Trafficking in Persons by UNODC, more than 90% of countries have legislation criminalizing human trafficking.⁶⁶ However, despite these developments, the 2014 UNODC study shows that from 2010 and 2012, some 40 per cent of countries reported less than 10 convictions per year. Some 15 per cent of the 128 countries covered in this recent report did not record a single conviction. The previous Global Report similarly found that 16 per cent of countries recorded no convictions between 2007 and 2010.⁶⁷ This issue was also debated in the UN General Assembly meeting where the International Organisation for Migration and the U.N. Global Initiative to Fight Human Trafficking (UNGIFT) noted that the number of people trafficked annually range from 600,000 to four million, and that range has remained largely unchanged over the past decade.⁶⁸ These data demonstrate clearly the almost complete failure of the prohibition regime towards this global problem. The 2014 UNODC Global Report - which is mandated by the General Assembly - covers 128 countries and provides an overview of patterns and flows of trafficking in persons at global, regional and national levels. It demonstrated that more than 90% of countries have legislation criminalising human trafficking, however, the number of successful prosecution has remained extremely low.⁶⁹ The 2016 UNODC Global Report, similarly, found that ‘...conviction rates, however, have remained remarkably low in many parts of the world, and there have been no significant increases on a global scale’.⁷⁰ Not only does this approach fail at a basic level to penalise the traffickers but it has also seriously undermining to the position and the rights of victims.⁷¹ In the case of forced criminal exploitation, in particular, victims’ motivation can change and in some cases they have become accomplices to the trafficking operation. Such individuals are unlikely to want to

⁶³ Scarpa (n 49), 63.

⁶⁴ Bruch (n 61), 18. See also The UN 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Art 5.

⁶⁵ A T Gallagher, ‘Prosecution of Trafficking in Persons Cases: Integrating A Human Rights-Based Approach in the Administration of Criminal Justice’ (2011) Expert Meeting of the UN Special Rapporteur on trafficking in persons, especially women and children. See also, UNODC From Protection to Prosecution www.unodc.org/documents/human-trafficking/2008/BP007FromProtectionToProsecution.pdf

⁶⁶ UNODC Global Report (n26), 5.

⁶⁷ *ibid.*

⁶⁸ M O Berger, ‘RIGHTS: Few Governments Serious About Human Trafficking, U.N. Finds’ 2009. www.ipsnews.net/2009/05/rights-few-govts-serious-about-human-trafficking-un-finds/ see further UNODC Global Report on Trafficking in Persons (2014).

⁶⁹ UNODC Global Report on Trafficking in Persons (2014).

⁷⁰ UNODC Global Report (n37), 48. See further eg International Bar Association (IBA) Report (2016) ‘Human Trafficking and Public Corruption’, 11.

⁷¹ H Askola, *Legal Responses to Trafficking in Women for Sexual Exploitation in the European Union* (Oxford, Hart Publishing, 2007) 125.

cooperate with law enforcement.⁷² It is, therefore, not surprising that, at least until recently, states have been developing their criminal justice responses ‘on the run, often under political pressure and principally through trial and error’⁷³ and ‘the criminal justice system response appears to be stagnating at a low level’.⁷⁴

2.3.Expansion of Crime Control Approach

Notwithstanding the evident limitations of this approach, the UN Human Trafficking Protocol has been expanded and strengthened by a number of regional treaties, treaty-like instruments and policy instruments adopting a similar prosecutorial framework which covers new types of exploitative behaviour such as begging and the exploitation of criminal activities. In particular, there have been two major attempts in Europe to address trafficking in persons through legislation by the Council of Europe (CoE) and the European Union (EU). Paralleling the UN approach, the 2005 CoE Convention began by specifying which types of human trafficking are to be the focus of member state action and in greater detail the requirements as to criminalisation.⁷⁵ However, in contrast to the Palermo approach, it sought to develop the protection of victims’ rights and the respect of human rights, aiming to achieve a better balance between human rights and prosecution.⁷⁶ In doing so, the CoE sought to add value to the pre-existing international legal regime provided by the UN Human Trafficking Protocol. The CoE Convention affirmed that trafficking in human beings is a violation of not only human rights but also human dignity and integrity. All forms of trafficking (national, transnational, whether or not connected with organized crime) are included in the Convention’s scope.⁷⁷ Although the reinforcement of victims’ protection was one of the welcome elements of the CoE Convention, as a whole it was mainly aimed at strengthening the criminal justice response, border controls and imposing criminal liability as expected preventive effects.⁷⁸

⁷² UNODC Global Report (n37), 40. See further eg E. Lo Iacono, ‘Victims, Sex Workers and Perpetrators: Grey Areas in the Trafficking of Nigerian Women’, (2014) 17 Trends in Organized Crime, 110.

⁷³ A T Gallagher and P Holmes, ‘Developing an Effective Criminal Justice Response to Human Trafficking: Lessons from the Front Line’ (2008) 18 International Criminal Justice Review 3, 318-43. See further eg A Moskowitz, Challenges and Priorities in Prosecuting and Adjudicating Trafficking in Persons Cases, Paper to Trafficking in Persons Research and Data Forum, 3–4 November 2008. www.aartip.org/2006/artip-project/documents/Paper_J&P-Challenges-TIP_22Oct08_fnl.pdf, 318. A T Gallagher, ‘Human Rights and Human Trafficking: Quagmire or Firm Ground? A Response to James Hathaway’, (2009) 49 Virginia Journal of International Law 4, 789-848; C S Vance, ‘States of Contradiction: Twelve Ways to Do Nothing about Trafficking While Pretending To’, (2011) 78 Social Research 3, 936.; A. Farrell, et al, ‘Identifying Challenges to Improve the Investigation and Prosecution of State and Local Human Trafficking Cases’ (2012) URBAN Institute; H. Andreovski, J. J. Larsen and S. Lynham, ‘Barriers to trafficked persons’ involvement in criminal justice proceedings: an Indonesian case study’ (2013) 451 Trends and Issues in Crime and Criminal Justice 1.; A. Farrell, ‘Environmental and institutional influences on police agency responses to human trafficking’ (2014) 17 Police Quarterly 1, 3-29; L. A. McCarthy, ‘Human trafficking and the new slavery’ (2014) 10 Annual Review of Law and Social Science, 221- 42.

⁷⁴ UNODC Global Report, (n 37) 50.

⁷⁵ EU Council Framework Decision of July 19, 2002 on combatting trafficking in human beings [2002/629/JHA (2002) OJ L 203/1]

⁷⁶ European Trafficking Convention Explanatory Report, at paras 29 and 57.

⁷⁷ European Convention, Art 2.

⁷⁸ A T Gallagher, ‘Recent Legal Developments in the Field of Human Trafficking: A Critical Review of the 2005 European Convention and Related Instruments’ (2006) European Journal of Migration and Law 8, 184. See further eg H Cullen, ‘The EU and Human Trafficking: Framing a Regional Response to a Global Emergency’, in A Antoniadis, R Schütze, and E Spaventa, (eds) The European Union and Global Emergencies: A Law and Policy Analysis (Bloomsbury, 2011), 225. A T Gallagher, The International Law of Human Trafficking (Cambridge University Press, 2010), 112.

The other major regional attempt to address trafficking in persons was undertaken by the European Union (EU) which has given priority to the struggle against organized crime whilst working in conjunction with both the UN Human Trafficking Protocol and the 2005 CoE Convention.⁷⁹ In a resolution of May 2000, the European Parliament called for a legal framework to respond to human trafficking at the European level, including both criminal law and human rights elements.⁸⁰ As a result, the two most important EU legal instruments on human trafficking were enacted. These were the Council Framework Decision on Combating Trafficking in Human Beings, adopted by the Council of the European Union in 2002⁸¹ and EU Council Directive on short-term residence permits for victims of trafficking, adopted in 2004.⁸²

The Framework Decision represented a significant extension of the Trafficking Protocol, as the member states are obliged to criminalize and investigate human trafficking cases irrespective of the commission of a transnational offence or an organised crime-related one.⁸³ The Framework Decision was thereby expected to improve implementation of the international legal regime.⁸⁴ With regard to human rights, member States are required to ensure that, the investigation and prosecution of trafficking cases does not rely solely on victim complaints.⁸⁵ In relation to criminal justice, the Framework Decision expanded the UN Human Trafficking Protocol's criminal justice focus and laid the foundation for the creation of effective cooperation strategies – not just within the EU but also between EU Member States and third countries.⁸⁶ It required member States to “take measures” to criminalize human trafficking related offences whether committed by natural or legal persons⁸⁷ and to provide appropriate punishments for such offences, including a maximum penalty of a prison sentence of at least eight years.⁸⁸ The 2002 Council Framework Decision on combating human trafficking⁸⁹ can be seen as a major contribution to the penal approach to the problem championed by the UN Human Trafficking Protocol. However, the absence of any rights-based and victim-centred approach was one of the main shortcomings of the EU legislation.⁹⁰

Subsequently, the EU Framework Decision 2002/629/JHA on combating the trafficking of human beings was replaced by the new EU directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting its Victims in 2011, which should have been transposed into national law by April 2013. Although this Directive claims to adopt ‘an integrated, holistic, and human rights approach to the fight against trafficking in human

⁷⁹ European Parliament. ‘Freedom, Security and Justice: An Agenda for Europe. Trafficking in Human Beings’, www.europarl.europa.eu/compar/libe/elsj/zoom_in/41_en.htm#top.

⁸⁰ *ibid.*

⁸¹ Council Framework Decision 2002/629/JHA of 19 July 2002 on Combating Trafficking in Human Beings [Official Journal L 203, 01.08.2002]

⁸² EU Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with authorities, www2.europarl.eu.int/oeil/FindByProcnum.do?lang=2&procnum=CNS020043

⁸³ J Winterdyk, B Perrin, P Reiche *Human*, (eds.) Trafficking: Exploring the International Nature, Concerns, and Complexities, (CRC Press, 2011), 135.

⁸⁴ EU urges Higher Priority on Trafficking in Women and Children, Europa Press Release IP/01/325, Mar. 7, 2001.

⁸⁵ EU 2002 Framework Decision on Trafficking, at Art 7(1).

⁸⁶ Gallagher (n 78) 167.

⁸⁷ 2002 Council Framework Decision on Trafficking, 2002/629/JHA, 19 July 2002, Arts 1-5.

⁸⁸ *ibid.* Art 3

⁸⁹ *ibid.* Preamble (7).

⁹⁰ Gallagher 2006, (n 78) 167.

beings'⁹¹ it has developed strict European Union criminal policy on criminal repression for human trafficking. It sets the maximum penalty for these offences as at least 5 years' imprisonment and at least 10 years in the case of aggravating circumstances.⁹² Also, some provisions of a preventive nature are introduced, which should lead to greater disclosure of human trafficking crimes. Given the low prosecution rate and the dramatic increases in trafficking flows, the practical effectiveness of a crime control approach used by the UN Human Trafficking Protocol – in conjunction with UNCTOC - and the EU instruments, cannot be described as a success.⁹³ Nevertheless, this global prohibition regime has been also recognised and supported by UNODC as the guardian of the Organized Crime Convention and its Protocol on Trafficking in Persons. In its 2014 Global Report it noted that there has been too little improvement in the overall criminal justice response, however, it reiterated the importance of robust criminal justice responses, particularly a comprehensive prosecution policy to tackle human traffickers.⁹⁴

The outcome of this intense period of international activity with regard to modern day slavery is a complex international/regional/domestic network of provisions which are based upon the proposition that slavery is a deviant activity exclusively within the field of operation of international crime. There has been no serious attempt to engage with the socioeconomic factors driving the upsurge in slavery-related practices and this has largely fallen outside the purview of government action.⁹⁵ Human rights issues, lack of equal opportunities, unemployment and poverty, which are widely considered to be the root causes of trafficking⁹⁶ have been all but completely neglected⁹⁷ in this strongly crime control based strategy, representing the major response of the international community.

3. REGULATING THE DEMAND FOR TRAFFICKED PERSONS

By way of contrast, the strategy based on addressing these issues at source has attracted much less international attention. Human trafficking is a phenomenon 'that ... is now entrenched into the fabric of our societies and our economy and the way that we live.'⁹⁸ Unlike many other crimes against humanity⁹⁹, trafficking in persons can also be characterised as everyday routine exploitation and can often pass unnoticed. At one level it violates a range of fundamental human rights such as the right to liberty, freedom from coercion and the freedom from discrimination and on a more mundane basis it is determined by the laws of everyday business,

⁹¹ Para 7 of the preamble to Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.

⁹² Art 4 of Directive 2011/36/EU.

⁹³ Gallagher (n 78)189.

⁹⁴ UNODC Global Report, (n68), Preface

⁹⁵ Chuang (n 23) 148.

⁹⁶ M G Giammarinaro, Trafficking in Women and Girls 6 (Div. for the Advancement of Women, Papers by Experts No. EGM/TRAF/2002/EP.6, 2002).

www.un.org/womenwatch/daw/egm/trafficking2002/documents.html.

⁹⁷ B Andrees, 'Defending Rights, Securing Justice The International Labour Organization's Work on Forced Labour' (2016) 14 Journal of International Criminal Justice 2, 357.

⁹⁸ A T Gallagher, The International Law of Human Trafficking (Cambridge University Press, 2010) 58.

⁹⁹ United Nations Office on Drugs and Crime, Human Trafficking, www.unodc.org/unodc/en/humantrafficking/what-is-human-trafficking.html ; Office of Legal Policy, U. S. Department of Justice, Human Trafficking www.justice.gov/olp/human_trafficking.htm ('Human trafficking is a violation of the human body, mind and spirit. . . . For this vile practice to be taking place in [the United States,] a country that the world looks to as a beacon of freedom . . . is a terrible irony and an utter tragedy').

by migration opportunities and needs, labour market dynamics, poverty, and cultural diversity.¹⁰⁰ Before moving on to consider how regulatory strategies might address the problem, it is important to consider the economic context which determines the nature of trafficking, particularly the relationship between the economics of demand and the economics of supply, as well as the political, social, cultural, institutional and economic factors that shape these elements.¹⁰¹

Profound changes have affected labour markets around the world in recent years. The demand for and supply of labour has become more extensively international¹⁰², with labour providers playing an important role in matching supply and demand in an increasingly integrated global market. The process of globalization and the associated liberalization has triggered dramatically increased cross-border labour flows, most of which are organized by private agents.¹⁰³ This global integration has also expanded the boundaries of markets, making them 'free' for all kinds of products¹⁰⁴ and enabling giant retailers who rely on subcontracting to reduce labour costs while significantly increasing their productivity.¹⁰⁵ This occurs where '(t)here is a demand for the cheapest and most flexible labour, certainly where profit margins are tight, staffing costs form an important part of the production costs and the work requires no expertise'.¹⁰⁶ Contractors around the world compete for workers who will accept the poorest wages and working conditions and allow the lowest labour, health and safety, human rights and supply chain standards.¹⁰⁷ Trafficked workers, especially those who have been physically abused or who are uncertain about their immigration status are prime candidates for this competition and particularly docile and undemanding.

It is inevitable in this context and given the legal restrictions placed by national states on the movement of persons across their borders, that the free-market economy would also attract international criminal gangs into trafficking workers and others.¹⁰⁸ The flexibility of trafficking operations is often cited as evidence of the involvement of organised crime groups but human trafficking could also be the 'crime that is organised' but not organized crime.¹⁰⁹ From the 1990s, organized criminals have become the facilitators for global markets with direct links to

¹⁰⁰ N Jägers, C Rijken, 'Prevention of Human Trafficking for Labour Exploitation: The Role of Corporations' (2014) 12 *Northwestern Journal of International Human Rights* 1, 50. See further eg D Shelton, 'Protecting Human Rights in a Globalised World' (2002) 25 *Boston College International & Comparative Law Review* 2, 273-322. ; P. Alston, *Non-States Actors and Human Rights*, (Oxford University Press, 2005), D Shelton and P. G. Carozza, *Regional Protection of Human Rights Pack* (Oxford University Press, 2013).

¹⁰¹ ILO, *The Demand Side of Human Trafficking in Asia: Empirical Findings*, (2006) *Regional Project on Combating Child Trafficking for Labour and Sexual Exploitation (TISCSA-II)*, 14.

¹⁰² C Kuptsch, 2008, 1.

¹⁰³ ILO *Action against Trafficking in Human Beings* (2008), *Special Action Programme to Combat Forced Labour* www.ilo.org/forcedlabour , www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_090356.pdf, 15.

¹⁰⁴ ILO, *The Demand Side of Human Trafficking in Asia: Empirical Findings*, (n 92) 17.

¹⁰⁵ UN.GIFT. (2008). *Demand for Forced Labour and Sexual Exploitation – How and Why it Fuels Human Trafficking*. Background paper for The Vienna Forum to fight Human Trafficking, 13-15 February 2008, Vienna, Austria. Available online at: www.ungift.org/docs/ungift/pdf/vf/aidmemoirs/demand%20for%20forced%20labour.pdf

¹⁰⁶ C E Dettmeijer-Vermeulen, (2007). *Trafficking in Human Beings: Fifth Report of the Dutch National Rapporteur*. The Netherlands: Bureau of the Dutch National Rapporteur on Trafficking in Human Beings. Available online at: english.bnrm.nl/reports/fifth/

¹⁰⁷ L Yanz, B Jeffcott, D Ladd, J Atlin, *Policy Options to Improve Standards for Garment Workers in Canada and Internationally*. (Ottawa: Status of Women Canada, 1999).

¹⁰⁸ ILO (n 101)17.

¹⁰⁹ D Kyle and R Koslowski, *Global Human Smuggling: Comparative Perspectives*, (John Hopkins University Press, 2013).

the legitimate economy and high profit margins.¹¹⁰ Traffickers respond to the bottleneck of cheap and easily disposable labour in many countries around the world and they take advantage of the huge supply of cheap labour, the lack of knowledge and low educational standards of migrant workers and the many constraints faced by them.¹¹¹ As a result trafficked persons become involved in an extraordinary range of different industries. In this context, demand and supply factors are closely intertwined, making it difficult to isolate the factors that cause trafficking¹¹² so that routine employment can very easily deteriorate into a trafficking/forced labour situation.

The process can be hugely profitable. In 2005, the ILO published its first estimate of the profits resulting from human trafficking, which was considered as a process involving the movement of a person by a third party.¹¹³ This report suggested that a minimum of 12.3 million persons were in forced labour at any point in time in the period 1995-2004 and the total illicit profits produced in a single year by trafficked forced labourers were estimated at US\$32 billion worldwide and US\$ 1.3 billion in Latin America (and the Caribbean).¹¹⁴ In the 2012 survey, the ILO estimated that 20.9 million people are in forced labour globally, trafficked for labour and sexual exploitation or held in slavery-like conditions.¹¹⁵ The total illegal profits obtained from the use of forced labour worldwide at this time amounted to US\$150.2 billion per year, representing a dramatic nearly five-fold increase in seven years. More than one third of the profits – US\$51.2 billion – were made in forced labour exploitation, including nearly US\$8 billion generated in domestic work by employers who used threats and coercion to pay no or low wages.¹¹⁶ The ILO's recent cost and benefit analysis shows that annual profit per victim is highest in the Developed Economies (US\$34,800 per victim), followed by countries in the Middle East (US\$15,000 per victim), and lowest in the Asia Pacific region (US\$5,000 per victim) and in Africa (US\$3,900 per victim).¹¹⁷

These figures underline the urgency of addressing directly the appalling misery produced by human trafficking. They also demonstrate that the responsibility for facilitating this trade does not lie exclusively with the organised crime cartels and kingpins but also and perhaps to a greater extent, with the familiar brand names on our high streets and in our corporate sectors. Any reduction in the demand for exploitative labour provided through the violent world of human trafficking must be achieved, not merely through the attractive expedient of chasing down and prosecuting organized crime but through the much more mundane strategies of collective responsabilization of legitimate business and an effective regime of regulation.

¹¹⁰ J Ham, Moving Beyond 'Supply and Demand' Catchphrases: Assessing the uses and limitations of demand-based approaches in anti-trafficking, Global Alliance Against Traffic in Women (GAATW), 2011, 50.

¹¹¹ ILO Action against Trafficking in Human Beings (2008), Special Action Programme to Combat Forced Labour www.ilo.org/forcedlabour, www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_090356.pdf p.4.

¹¹² ILO (n 101) 2.

¹¹³ ILO: A global alliance against forced labour, Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work (Geneva, 2005).

¹¹⁴ P Besler, Forced Labour and Human Trafficking: Estimating the Profits, (Geneva, ILO, Special Action Programme to Combat Forced Labour, 2005), DECLARATION/WP/42/2005.

¹¹⁵ Profits and Poverty: The economics of forced labour, Special Action Programme to Combat Forced Labour (SAP-FL), International Labour Organisation (ILO), Geneva, 2014, 5.

¹¹⁶ ILO global estimate of forced labour: results and methodology / International Labour Office, Special Action Programme to Combat Forced Labour (SAP-FL). Geneva: ILO, 2012.

¹¹⁷ ILO (n 115) 14.

3.1. Responsibilisation and Regulation

Given the complex interconnections between legitimate industries and the illicit economy of trafficking and given the huge profits generated by this activity, it is no longer possible to maintain that a prosecution strategy alone can be successful. In a holistic approach to the struggle against trafficking, individuals, local authorities and private enterprises of all sizes must all be held accountable. Garland has described this as a ‘responsibilization strategy’ which is an important trend in crime control but, importantly, one that exists alongside the growth of an increasingly punitive state.¹¹⁸ However, this paper takes a different approach, identifying this ‘responsibilisation strategy’ as something normatively desirable that competes with purely punitive approaches. The compliance approach and the punitive approach should be integrated not ‘as goals of criminal justice’ but as ‘means of achieving broader crime control goals’ and a deterrence strategy in the most cost-effective way.¹¹⁹ Criminal justice is a matter of social justice where the legal system ‘must compete for resources with other aspects of the welfare state’ and therefore, there is a ‘need to know how to balance social justice’ and ‘different criminal justice priorities’.¹²⁰ Instead of the traditional crime control response, with its focus on prohibition, repression and punishment of a few, easily identifiable offenders, there should be a shift of emphasis towards more ‘governing at a distance’ which is aimed at eliminating the conditions, including the illicit demand for exploitative labour, under which trafficking can flourish. Central to this strategy is the enforcement of international labour standards which seek to eradicate the abusive employment practices which create an environment in which trafficking can flourish.

The UN CTOC Working Group on Trafficking in Persons has urged states to view the reduction of demand for exploitative services as requiring an integrated and coordinated response. It recommended states parties to adopt practices aimed at enforcing labour standards and labour regulations; at increasing the protection of the rights of migrant workers; and at the adoption of measures to discourage the use of the services of victims of trafficking.¹²¹

Regulation, in general, is ‘the intentional activity of attempting to control, order or influence the behaviour of others’¹²² with a view to preventing undesirable conduct and to enabling the occurrence of desired conduct. In other words, regulation aims to influence behaviour by using positive and negative incentives¹²³ and it can be applied to many areas of social and economic life. In business, regulation refers to the ‘use of the law to constrain and organise the activities of business and industry’.¹²⁴ Both regulations and criminal law can be used to control the activities of business and regulation involves a range of theoretical and political positions

¹¹⁸ D Garland, *The Culture of Control: Crime and Social Order in Contemporary Society*, (Oxford, Oxford University Press, 2001), 124.

¹¹⁹ A Sanders, ‘The nature and purposes of criminal justice: the ‘freedom’ approach’ in T. Seddon and G. Smith (ed) *Regulation and Criminal Justice* (CUP 2010), p. 57.

¹²⁰ *ibid.* p. 61.

¹²¹ Conference of the Parties to the UN Convention against Transnational Organized Crime, Activities of the Working Group on Trafficking in Persons, Report submitted by the Chair of the Working Group (for the fifth session, 18-22 October 2010), UN document CTOC/COP/2010/6 (10 August 2010), paras 61 and 66. www.unodc.org/documents/treaties/organized_crime/COP5/CTOC_COP_2010_6/CTOC_COP_2010_6_E.pdf

¹²² J Black, ‘Critical Reflections on Regulation’ (2002) 27 *Australian Journal of Legal Philosophy*, 1.

¹²³ B Andrees, A Nasri, P Swiniarski, ‘Regulating labour recruitment to prevent human trafficking and to foster fair migration: Models, challenges and opportunities’ (2015) *International Labour Organization* (ILO), 8. See further eg R Baldwin, M Cave, M Lodge, *Understanding Regulation: Theory, Strategy and Practice*, (Oxford University Press, 2012), 3; J Black, *Critical Reflections on Regulation*, (London School of Economics and Political Science, 2002).

¹²⁴ B Hutter, *Compliance: Regulation and the Environment*, (Clarendon Press, Oxford, 1997).

which can be broadly summarized as conservative, liberal and radical.¹²⁵ A conservative approach is associated with advocates of *laissez faire* and free market principles, for whom any form of regulation should be kept to a minimum as market forces provide sufficient protection. Those holding liberal views, accept that regulation is necessary and seek a balance between regulatory and criminal sanctions. To radical theorists, often associated with critical criminology, law and regulation are inevitably limited by the pervasive influence of business interest and strong criminalization is necessary.¹²⁶

This paper takes the liberal view that a labour approach can supplement the prohibition of human trafficking by changing the social and economic conditions that sustain human trafficking, specifically the strong demand for disempowered labour at the lowest possible cost. As Croall puts it the main aim of law from this point of view is to secure and maintain high standards of business and enforcement, to ensure an appropriate balance between the interests of industry and public protection.¹²⁷ The labour approach involves the criminal prosecution authorities to some extent, however, it is particularly focused on the victim's need for protection and support. This includes, from the ILO point of view, the extent and root causes of trafficking in persons for the purpose of exploitative labour is crucial which has to be dealt with through labour law and regulation first instead of criminal law enforcement. Regulations must be international to be successful and the only organization capable of co-ordinating this response is the ILO. The next section will analyse the regulatory approach which has been taken by the ILO.

3.2. Decentring the Prosecution-Oriented Approach

For some years now there has been a persistent demand for a decentring of regulation away from the prosecutorial state agencies to other, multiple locations. These not only include local authorities and civil society agencies but ultimately the commercial world itself. As Black puts it: 'The decentring analysis emphasizes the deapexing of the state: the move from a hierarchical relationship of state-society to a heterarchical one.'¹²⁸

Given the Weberian monopoly of force and coercion by the state and the sectional and multinational interests of the commercial world, these developments are not without difficulties. It is unsurprising, therefore, that the implications of this approach for our whole understanding of the relations between the police/prosecution authorities and the commercial sector have been the subject of intense debated.¹²⁹ The simplicity and coherence of earlier strategies such as that of Ayres and Braithwaite's "Enforcement Pyramid"¹³⁰, in which the relationship between persuasion and punishment is effectively partitioned, have been called

¹²⁵ M Clarke, *Regulation: The Social Control of Business between Law and Politics*, (Macmillan, Basingstoke and London, 2000); S Simpson, *Corporate Crime, Law, and Social Control*, (Cambridge University Press, Cambridge, 2002).

¹²⁶ H Croall, 'Combating financial crime: regulatory versus crime control approaches' (2004) 11 *Journal of Financial Crime* 1, 45.

¹²⁷ *ibid.* 46.

¹²⁸ J Black, 'Decentring Regulation: Understanding the Role of Regulation and Self-Regulation in a 'Post-Regulatory' World' (2001) 54 *Current Legal Problems* 1, 145.

¹²⁹ M Gill, 'Engaging the Corporate Sector in Policing: Realities and Opportunities' (2013) 7 *Policing* 3, 273-279.

¹³⁰ I Ayres and J Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate*, (New York, Oxford University Press, 1992).

into question.¹³¹ The importance of these debates indicate a growing awareness of the significance of regulation and the need for effective integration with traditional prosecution strategies and this is reflected in a profusion of recent research initiatives. Two recent Swedish studies, for example, have attempted to explore the boundaries of policing and regulation. Engdahl and Larsenn in an account of the regulation of commercial criminality in Sweden, have drawn attention to the growing complexity of enforcement agencies at global, regional and national levels and their multifaceted relationships with alternative, “decentred” forms of regulation.¹³² Hörnqvist, in examining restaurant tax evasion in the same country, has tried to explain how policing and regulation can “merge” around the concept of the “unreported transaction”.¹³³

In relation to trafficking, Shin has demonstrated how the “flattened and paternalistic perception and treatment” of trafficking victims in the Filipina sex/entertainment trade, as either victims or illegal migrants, has resulted in their disempowerment since they are denied appropriate legal protections and remedies for the serious rights violations which they suffer in the destination state. As Shin has demonstrated, an integrated response based on the human, civil and labour rights context could prove much more effective than one based merely on the prosecution dynamic of the global anti-trafficking regime.¹³⁴ Kotiswaran makes similar points with regard to Indian sex workers, offering India’s bonded, contract and migrant labour laws ‘as a robust labour law model against trafficking that could inform international legal developments’ in sharp contrast to the existing prosecution-only approach taken by the UN Human Trafficking Protocol.¹³⁵ Instead, growing attention should be paid to regulatory developments in order to better monitor the behaviour of multinational and national enterprises, requiring them to submit to greater scrutiny and transparency.¹³⁶

3.3.The ILO Approach to Regulation

The ILO’s constitutional mandate covers promoting social justice and internationally recognised human and labour rights and enhancing the effectiveness of social protection for all.¹³⁷ The ILO has from its inception addressed the problem of trafficking in human beings and it quickly received broader attention through the 1930 Convention against Forced Labour.¹³⁸ It established the internationally-recognised definition of forced labour, which is expressed as ‘all work or service which is exacted from any person under the menace of any penalty and for

¹³¹ P Mascini, ‘Why was the Enforcement Pyramid so Influential? And What Price was Paid?’ (2013) 7 Regulation & Governance 1, 48-60.

¹³² O Engdahl and B Larson, ‘Duties to Distrust: The Decentring of Economic and White-Collar Crime Policing in Sweden’ (2015) 56 British Journal of Criminology 2, 1-22.

¹³³ M Hörnqvist, ‘Regulating Business or Policing Crime? Tracing the Policy Convergence Between Taxation and Crime Control at the Local Level’ (2015) 9 Regulation & Governance 4, 352- 66.

¹³⁴ Y J Shin, ‘Human Trafficking and Labor Migration: The Dichotomous Law and Complex Realities of Filipina Entertainers in South Korea and Suggestions for Integrated and Contextualized Legal Responses’ (2015) 48 Vanderbilt Journal of Transnational Law, 753-812.

¹³⁵ D Raigrodski, ‘Economic Migration Gone Wrong: Trafficking in Persons Through the Lens of Gender, Labor, and Globalization’ (2015) 25 Indiana International and Comparative Law Review, 79-114.

¹³⁶ P Hunter and Q Kepes, Human Trafficking & Global Supply Chains: A Background Paper, 2012, 8. www.ohchr.org/Documents/Issues/Trafficking/Consultation/2012/BackgroundPaper.pdf

¹³⁷ ILO Declaration on Social Justice for a Fair Globalization adopted by the International Labour Conference at its Ninety-seventh Session, Geneva, 10 June 2008.

¹³⁸ ILO (n 102) 5.

which the said person has not offered himself voluntarily.’¹³⁹ It emphasized not only that the States Parties to the Convention must ensure that ‘the illegal exaction of forced or compulsory labour should be punishable as a penal offence’¹⁴⁰ but it also highlighted the importance of ‘regulations governing the employment of forced or compulsory labour’.¹⁴¹ Economic and social rights were also developed at this period particularly by the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR). These so-called second order human rights were recognised by this core international instrument which emphasises ‘the inherent dignity of (the) human person’ and the realisation of the individual ‘responsibility to strive’ for the promotion and observance of these rights.¹⁴² The collapse of communism in Eastern Europe and the end of the Cold War later transformed social and economic relations between individuals and groups around the world.¹⁴³ The transformation of the labour movement was initiated by economic globalisation, and the world-wide consolidation of the neoliberal socioeconomic agenda which advocates free markets, privatisation, minimized state roles, and labour market flexibility.¹⁴⁴ At the same time that the UN was developing its aggressive prosecutorial strategy, the ILO was creating a quite different array of international instruments to place the foundations for a comprehensive anti-trafficking strategy based on regulation.

Whilst the initial goal of the ILO’s Forced Labour Conventions was to eliminate state-imposed forced labour, such as the forced labour used by colonial powers, prison labour camps and forced labour imposed by military regimes, the issue of human trafficking has emerged with greater urgency and in a different form in more recent years. A new labour–human rights alliance built a wide ranging discourse of workers’ rights as human rights.¹⁴⁵ Subsequently, these developments encouraged the labour movement to investigate new sources of legitimacy and new strategies and modes of operation. For instance, the ILO adopted in 1998 its Fundamental Declaration of Principles and Rights at Work which reflected the approach taken under the human rights paradigm.¹⁴⁶ The four principles of the ILO Declaration encapsulate the issues at the heart of trafficking in persons and provide a sound foundation for action¹⁴⁷ and it affirms that all ILO Members States, even if they have not ratified the ILO Core Conventions,¹⁴⁸ have an obligation to promote fundamental rights which are the subject of those Conventions.

¹³⁹ Art 2 of the ILO Forced Labour Convention, 1930 (No. 29).

¹⁴⁰ International Labour Organization Convention Concerning Forced or Compulsory Labour (No. 29), June 28, 1930, 39 U.N.T.S. 55. ILO Forced Labour Convention (No. 29), Art 25.

¹⁴¹ ILO Forced Labour Convention, 1930 (No. 29), Arts 23 and 24.

¹⁴² Preamble of the International Covenant on Economic, Social and Cultural Rights.

¹⁴³ See in general, G Andrusz, M Harloe, I Szelenyi, *Cities After Socialism: Urban and Regional Change and Conflict in Post-Socialist Societies*, (Blackwell, 2008). 310; C Apodaca, ‘Global Economic Patterns and Personal Integrity Rights after the Cold War’ (2001) 45 *International Studies Quarterly* 4, 587-602; B. Greenhill, ‘The Company You Keep: International Socialisation and the Diffusion of Human Rights Norms’ (2010) 54 *International Studies Quarterly*, 127- 45.

¹⁴⁴ I Al-Haque, ‘Globalization, Neoliberalism and Labour’, U.N. Conference on Trade & Dev., Discussion Papers, No. 173, 2004, available at www.unctad.org/en/docs/osgdp_20047_en.pdf

¹⁴⁵ L Compa, ‘Labor’s new opening to international human rights standards’ (2008). from Cornell University, ILR School site: <http://digitalcommons.ilr.cornell.edu/articles/373/>

¹⁴⁶ H Shamir, ‘A Labour Paradigm for Human Trafficking’ (2012) *UCLA Law Review*, 96.

¹⁴⁷ For example: the freedom from coercion at work, the freedom to set up associations and bargain collectively, and the freedom from discrimination at work, and child trafficking.

¹⁴⁸ For further information about the Declaration, please visit: www.ilo.org/declaration

Core Labour Conventions are set out in the following four categories:

Freedom of association and the right to collective bargaining.

• Freedom of Association and Protection of the Right to Organize Convention (No. 87), 1948.

The ILO has therefore emerged as an important new actor in the field of anti-trafficking policies and performed, in this context, its established functions as a body for standard-setting, technical assistance and supervisory mechanism through the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR).¹⁴⁹ In addition, the ILO Special Programme of Action to Combat Forced Labour (SAP-FL)¹⁵⁰ in 2002 initiated research in order to clarify the relation between forced labour and trafficking, provided technical assistance for ILO member-parties to formulate and implement legislation on trafficking and forced labour, and prepared the updating of ILO standards concerning forced labour that took place in 2014.¹⁵¹ By explicitly linking the issue of forced labour with the governance of labour recruitment, the ILO standards have paved the way for enhancing prevention, protection and remedies, including through the application of labour law. As such, they not only complement but move well beyond the UN Human Trafficking Protocol.¹⁵²

This discussion, starting at the International Labour Conference in June 2012, eventually led to the adoption of the 2014 ILO Protocol to the Forced Labour Convention, 1930 (No. 29) and Recommendation No. 203. The Protocol explicitly recognizes the need for special measures to address trafficking for the purpose of forced or compulsory labour (Article 1(3)) and calls for measures to prevent forced labour, including the protection of persons, especially migrant workers, from abusive and fraudulent recruitment practices (Article 2 (d)). The Recommendation provides further guidance on this issue as indicated above. It can be considered as an important milestone that such specific language on recruitment is now included in one of the ILO's fundamental instruments.¹⁵³ The 2014 ILO Protocol in many senses represents the culmination of this process. It specifies that measures to be taken by governments for the prevention of forced labour which include: 'protecting persons, particularly migrant workers, from possible abusive and fraudulent practices during the recruitment and placement process.'¹⁵⁴ The ILO Director General, Guy Ryder, in his closing remarks to the 103rd session of the ILC stated that:

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- Right to Organize and Collective Bargaining Convention (No. 98), 1949.
 - Forced Labour.
 - Forced Labour Convention (No. 29), 1930.
 - Abolition of Forced Labour Convention (No. 105), 1957.
 - Child Labour.
 - Minimum Age Convention (No. 138), 1973.
 - Worst Forms of Child Labour Convention (No. 182), 1999.
 - Discrimination in Respect of Employment and Occupation.
 - Equal Remuneration Convention (No. 100), 1951
 - Discrimination (Employment and Occupation) Convention (No. 111), 1958.

¹⁴⁹ *ibid.* 28. See further e.g. ILO: General Survey concerning employment instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization, 2010, Report III (1B), International Labour Conference, 99th Session, (Geneva 2010).

¹⁵⁰ ILO (n 103).

www.ilo.org/global/topics/forced-labour/WCMS_210827/lang--en/index.htm

¹⁵¹ N Cyrus and D Vogel, 'Demand Arguments in Debates on Trafficking in Human Beings: Using an historical and economic approach to achieve conceptual clarification' 2015, 16. Funded project by European Commission www.demandat.eu

¹⁵² Andrees and Nasri (n 121) 16.

¹⁵³ *ibid.*

¹⁵⁴ Regulating recruitment: labour and criminal justice responses in preventing trafficking in persons and migrant exploitation, Bangkok 18-19 November, ILO 2014.

The adoption of the Protocol to the Convention is the fruit of our collective determination to put an end to an abomination which still afflicts our world of work and to free its 21 million victims.¹⁵⁵

The role of strengthening labour standards in reducing demand for the labour or services of trafficked persons is crucial. Where these standards are monitored and routinely enforced, the cost of non-compliance by employers can well outweigh any benefits derived by exploiting their workers, thus reducing exploitation and, in turn, severe forms of this exploitation which amount to criminal conduct.¹⁵⁶

3.4. Regulatory Enforcement

It might be argued that, since trafficking is by definition illegal activity, it is therefore beyond the reach of the regulatory approaches described here. Nothing could be further from the truth and the enforcement through deterrence, discovery, sanctions and rehabilitation to ensure compliance with the law can have a dramatic impact.¹⁵⁷ In this process and particularly in the enforcement of labour standards, different authorities can be involved, such as public employment services, labour inspectorates, police, specialist enforcement units, immigration authorities and tax authorities.¹⁵⁸ Regulatory enforcement in practice can adopt a ‘punitive’ style with strict enforcement or a ‘flexible’ style¹⁵⁹ with a discretion in which criminal prosecution is used as a last resort. It can involve cooperative compliance strategies including persuasion, advice and education approaches,¹⁶⁰ whereas, a punitive style emphasises conflict, arrest and prosecution, punishment.¹⁶¹ By applying regulatory enforcement, labour standards and compliance can work more effectively, particularly in global supply chains where there should be more attention at the factory level to improve labour law in order to reduce the risk of exploitative labour.

A major incentive for trafficking in persons for exploitative labour is the lack of application and enforcement of labour standards, such as those related to recruitment of workers, the payment of wages, working hours, health and safety and the termination of employment contracts. This suggests that demand for the labour of trafficked persons is lower where workers are protected and where labour standards are routinely monitored and enforced. While violations of individual labour law provisions may not amount to trafficking as such, the combination of various abusive labour practices with factors that prohibit a worker from exiting their employment relationship can create a situation of trafficking for labour exploitation.¹⁶² Therefore, the effective implementation of international labour standards can mitigate the risk

¹⁵⁵ The 103rd Session of the International Labour Conference (ILC)

www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_321414.pdf

¹⁵⁶ ICAT, Inter-Agency Coordination Group Against Trafficking in Persons, ‘Preventing Trafficking in Persons by Addressing Demand’, (2014), 26.

¹⁵⁷ Andrees and Nasri (n 121)10.

¹⁵⁸ *ibid.*

¹⁵⁹ R A Kagan, ‘Regulatory enforcement,’ in D H Roosenbloom and R D Schwarts (eds), *Handbook of Regulation and Administrative Law*, (New York: Marcel Dekker, 1994), 383-422. See also, R A Kagan, and J T Scholz, ‘The Criminology of the Corporation and regulatory enforcement strategies’, in K Hawkins and J M Thaomas (eds), *Enforcing Regulation*, (Boston: Kluwer-Nijhoff, 1984), 67-95.

¹⁶⁰ Croall (n 124). See further eg H Croall and J Ross, ‘Sentencing the Corporate Offenders’, in N Hutton and C Tata (eds), *Sentencing and Society*, (Ashgate, Aldershot, 2002).

¹⁶¹ Croall (n 124) 46.

¹⁶² ICAT (n154) 11.

of human trafficking and reduce the demand for exploitative labour by creating an environment where the risks and costs associated with non-compliance with labour laws are higher than the potential profits.¹⁶³

The ILO's international labour standards (ILS) are, in fact, the basis on which labour compliance is interpreted and assessed.¹⁶⁴ In this context, failure to comply with obligations under a convention is addressed by CEACR and a Commission of Inquiry can be also established to take actions to expedite compliance.¹⁶⁵ Furthermore, compliance with ILO standards is often achieved through a combination of technical assistance, supervision and external factors. Even if a member state does not ratify a specific Convention, it may revise its legislation to ensure conformity with international standards.¹⁶⁶ Many forced labour-related crimes may be identified by labour inspectors but not be followed up under criminal law and therefore not be counted as such.¹⁶⁷ This suggests that a gap between laws and compliance exists in many countries. Therefore, enhancing social responsibility for the supply chains through cooperation among industries, private and public sectors, corporations and governments can play an important role where it is particularly difficult to implement labour standards in the unregulated, informal economies of some businesses- where due to hidden characteristics of human trafficking some individuals are brutally forced to work.¹⁶⁸ Only a small number of companies and business leaders consider trafficking a serious risk to the security of their supply chains.¹⁶⁹ This has affected companies and businesses directly or indirectly as exploitative labour can often be hidden and invisible somewhere along the supply chains. In this journey, not only the micro-level interactions can produce coercive forms of labour organisation but also the macro-level conditions play an important role as they serve to perpetuate global systems of exploitation. Therefore, in order to tackle this widespread illicit global enterprise effectively, anti-human trafficking initiatives should be also engaged with the responsabilisation of the private economy where harmonised punitive and regulatory mechanisms cannot address exploitation incidents appropriately. That is to say that human trafficking should be prioritised as a key issue on the agenda of supply chains actors and businesses and, in short, an effective regulatory strategy is a holistic one.

¹⁶³ *ibid.* 13

¹⁶⁴ www.ilo.org/washington/areas/implementing-labor-principles/lang--en/index.htm

¹⁶⁵ www.ilo.org/global/about-the-ilo/how-the-ilo-works/ilo-supervisory-system-mechanism/lang--en/index.htm

This happened in the case of Myanmar. In view of the Government's failure to take the necessary action to implement the recommendations of the Commission of Inquiry, the International Labour Conference (ILC) adopted at its 87th Session (June 1999) a resolution on the widespread use of forced labour in Myanmar/Burma; Resolution concerning the measures recommended by the Governing Body under article 33 of the ILO Constitution on the subject of Myanmar available on

www.ilo.org/public/english/standards/relm/ilc/ilc88/resolutions.htm#_ftnref1

¹⁶⁶ ILO: Rules of the Game. A brief introduction to International Labour Standards, Revised Edition (Geneva 2014); Rodgers et al: The ILO and the Quest for Social Justice 1919 – 2009, (Geneva 2009).

¹⁶⁷ B Andrees, 'Forced Labour and Human Trafficking: A Handbook for Labour Inspectors', International Labour Organisation (ILO) 2008, 17-18.

¹⁶⁸ www.ilo.org/washington/areas/implementing-labor-principles/WCMS_207918/lang--en/index.htm

¹⁶⁹ ILO, UNGIFT and UN Global Compact, Human Trafficking: Everybody's Business. www.unglobalcompact.org/docs/news_events/9.1_news_archives/2009_03_27/Story_Survey_Final.pdf

4. CONCLUSION

The catastrophic and destabilising impact of major international flows of trafficked and migratory labour are only just beginning to be fully recognised. It is no longer possible to see this phenomenon through the narrow lens of the UN Human Trafficking Protocol, as merely deviant activity, the exclusive preserve of organised crime, which can be confronted and overcome by the coordinated prosecution of professional traffickers. Something much more fundamental to our political economies is clearly taking place, which demands a more holistic solution. Worse still, it is now clear that the major outcome of the agreement reached in Palermo in 2000 has been to demonise and to criminalise large sections of migratory labour and to justify the use of violent and potentially lethal measures against them as demanded by increasingly vocal and powerful elements in European¹⁷⁰ and north American¹⁷¹ politics.

Human trafficking has to be considered as a social problem which has universal impacts, with its roots bedded deep in recent developments in the international market for labour. It is ironic that the neoliberal socio-economic agenda which so vigorously promoted flexibility in the international labour market, should at the same time seek to criminalize its participants. Prohibition and supply-side issues have taken precedence once again and demand-side interventions which require increased attention to root causes including economic, social and cultural factors that enable the exploitation of trafficked persons, have been ignored. The demand for cheap and fraudulent labour moves beyond boundaries and this is where the traffickers provide a link between demand and supply.¹⁷² A prosecutorial strategy which is targeted exclusively on suppliers and other minor players cannot possibly succeed in making trafficking an unprofitable business.¹⁷³ Only by focusing on the exploitative practices at the end destination and targeting the economics of trafficking can this be achieved.

This paper has argued in favour of a broader ‘responsibilisation’ approach to the problem of trafficking in persons and this has been demonstrated through a comparison of the two important international Protocols; the UN Human Trafficking Protocol which proposes a merely punitive approach and the 2014 ILO Protocol which offers the potential for the development of responsibilisation strategies and focuses on demand as one of the root causes of human trafficking. Whilst the UN Human Trafficking Protocol was a supplement to the UN Organized Crime Convention, its crime control scope has been expanded and strengthened through the CoE Convention, EU Directives and EU policies. These initiatives provided some modest additions to victims’ protection but, as we have seen, these are wholly inadequate. The punitive approach, which considers human trafficking as an ‘isolated phenomenon without analysing its roots in capitalist-production relations and the prevailing driving forces of globalization’ has demonstrably failed to deliver its objectives.¹⁷⁴

Recent studies have demonstrated that a ‘new punitiveness’ approach and an ‘ever-tougher law enforcement’ has been developed in Britain and in many other industrialised counties during

¹⁷⁰ See e.g. the approach of F. Petry, Head of the *Alternativ fuer Deutschland* party at www.bbc.co.uk/news/world-europe-35452306

¹⁷¹ See, e.g. the approach of Republican Presidential contender Donald Trump at www.donaldjtrump.com/positions/immigration-reform

¹⁷² ILO 2005, Human Trafficking and Forced Labour Exploitation Guidelines for Legislation and Law Enforcement, 2.

¹⁷³ ICAT (n 154) 10.

¹⁷⁴ C f Jens Lerche, ‘A Global Alliance Against Forced Labour? Unfree Labour, Neo-Liberal Globalization and the International Labour Organization’ (2007) 7 J. Agrarian Change 425, 430-31.

the last two decades.¹⁷⁵ However, encouraging compliance with a regulatory approach through responsabilisation offers an alternative to prosecution strategies to reduce re-offending on the one hand, and to prevent crime and tackle the root cause of human trafficking on the other. A regulatory approach can therefore play an effective role in identifying and addressing factors that contribute to the demand that underpins all forms of exploitative labour.

This paper strongly argued that the 2014 ILO Protocol offers the international community the real prospect of achieving ‘a complementary labour approach which takes into account the role of labour administration and labour inspection in preventing and combating forced labour’ while at the same time radically improving prevention and protection measures for victims.¹⁷⁶

Instead of placing responsibility exclusively on law enforcement agencies, resulting in a supply-oriented control regime, primacy should be given to a collective social responsibility to eliminate the conditions which can drive vulnerable individuals into disposable labour and unregulated employment relationships. This commitment could be strengthened through a holistic approach where the crime control aspects of trafficking are addressed alongside human rights and labour concerns. To enable this to be achieved, a much more nuanced understanding of the complexities of human trafficking also needs to be accepted by the international community.¹⁷⁷

The ILO’s anti-trafficking initiatives can play an important role as there is an urgent need to apply a dual approach combining prosecution and law enforcement with employment-based for prevention and the rehabilitation of victims of human trafficking. However, there are a number of significant challenges and barriers to the implementation of this approach. Ratification of the ILO 2014 protocol and universal ratification of ILO Conventions 29¹⁷⁸ and 105¹⁷⁹ are extremely important, and generally the application of laws and policies are a challenge worldwide. The first step would require a very dramatic increase in the number of ratifications of the ILO 2014 protocol. The second would be to encourage the enactment of domestic legislation requiring the national corporate and business sectors to investigate supply chains and employment practices specifically to identify evidence of human trafficking. Section 54 of the UK Modern Slavery Act 2015 might provide a model for such legislation. Finally, a system of domestic regulation is needed to effectively monitor the performance of organisations in this respect and to encourage a culture of zero tolerance towards questionable labour practices.

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¹⁷⁵ Sanders (n 119) 55.

¹⁷⁶ ILO Forced Labour and Trafficking Discussion paper, 60.

¹⁷⁷ A T Gallagher and R Surtees, ‘Measuring the Success of Counter- Trafficking Interventions in the Criminal Justice Sector: Who decides—and how?’ (2012) 1 Anti-Trafficking Review.

¹⁷⁸ The ILO Forced Labour Convention 1930, (No. 29).

¹⁷⁹ The ILO Abolition of Forced Labour Convention, 1957 (No. 105).

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